U.S. Department of Justice

Immigration and Naturalization Service

CA

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC-98-031-53967 Office: California Service Center Date: JAN 09 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The approval of the immigrant visa petition was revoked by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as "Director of Religious Music" at a salary described as a "modest stipend" and "in-kind assistance."

The Form I-360 petition was filed on November 14, 1997, and was approved on November 29, 1997. At the time of a consular interview prior to visa issuance, it was determined that the beneficiary was not eligible for the benefit sought. Based on a sworn statement executed by the beneficiary, it was determined that he did not have the requisite two years of continuous experience in a religious occupation required for special immigrant classification. The Consular Office, Manila, Philippines, returned the petition to the center director for reconsideration.

Upon review of the record and the additional evidence, the center director determined that the petition had been approved in error. It was determined that the record did not establish that the position of director of religious music constituted a qualifying religious occupation for the purpose of special immigrant classification. It was further determined that the beneficiary's past experience did not constitute the requisite continuous experience in a religious occupation.

The director therefore properly served the petitioner with a notice of intent to revoke and considered the petitioner's response to that notice. In a decision dated June 29, 1999, the director then revoked the petition pursuant to 8 C.F.R. 205.2.

On appeal, counsel for the petitioning church argued that the revocation was "contrary to the law and the evidence." Counsel submitted a copy of a joint brief prepared for four separate appeals of special immigrant religious worker cases. Counsel stated that the facts of the cases were identical.

Upon review of the record, it must be concluded that the petitioner has failed to overcome the grounds of ineligibility cited in the notice of revocation.

First, based on the beneficiary's own testimony, the director concluded that his prior work experience was insufficient to satisfy the prior experience requirement set forth at 8 C.F.R. 204.5(m)(1) which requires continuous employment in a religious occupation.

Counsel argued on appeal that the Service failed to fully consider evidence in the form of a statement from a Cardinal of the beneficiary's church in the Philippines. Counsel further asserted that "the INS held that Cardinal Vidal lied in his Declaration" where he stated that the beneficiary had been employed continuously in a full-time capacity.

Counsel's argument regarding the evidence is not persuasive and the characterization of the director's discussion unwarranted. The beneficiary executed a sworn statement on September 4, 1998, at the United States Embassy in Manila. The statement regarded the beneficiary's work experience and education from 1991 through the date the petition was filed. The statement recounted part-time positions teaching music for various schools, both public and parochial, and included volunteer work with at least two churches as a pianist and choir trainer. The director found that the sum of the beneficiary's work experience consisting of part-time and volunteer positions with both religious and secular institutions did not satisfy the requirement that the beneficiary have been employed continuously in a religious occupation. The director based the revocation on the beneficiary's signed statement executed in the presence of a United States consular officer.

It is noteworthy that the statement from Cardinal Vidal dated April 19, 1999, recounts a similar fact of the beneficiary's work history and then opines that, "Mr. [redacted] as thus been continuously employed for more than four years as a Roman Catholic religious worker in the area of sacred music." The director did not dispute the statement submitted by the Cardinal, it merely applied a different interpretation of the facts of the beneficiary's work history.

Second, the director found that the proposed position did not constitute a qualifying religious occupation as defined at 8 C.F.R. 204.5(m)(2) and concluded that the prior approval of the petition had been in error.

The joint brief submitted by counsel argues the same points regarding the definition of a qualifying religious occupation that counsel advanced in response to the notice of intent to revoke. The director reviewed that argument and found it unpersuasive. Counsel did not advance a new argument on appeal.

The director set out in detail the interpretation of the Service's own regulation to find that the petitioner had failed to establish that the position of "director of religious music" was a qualifying religious occupation. As counsel failed to establish that the decision was incorrect as a matter of law, the decision will not be disturbed.

Finally, beyond the decision of the director, the record reveals an

additional ground of ineligibility. The record does not establish that the petitioner demonstrated that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not identified the terms of remuneration. A statement that the beneficiary will receive "a modest stipend" is insufficient to satisfy the requirement of the regulation. Furthermore, the record does not establish that the beneficiary will not be dependent on supplemental employment. The Service interprets 8 C.F.R. 204.5(m)(4) as not permitting a special immigrant religious worker to engage in any form of supplemental secular employment. Therefore, the petitioner has not tendered a qualifying job offer.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.